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Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1092

JACK MARRIN WILLIAMSON,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

JAMES P. COLEMAN,
Ackerman, Mississippi,
Attorney for Petitioner.

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in this case on January 25, 1965, 340 Fed. 2d 612, and on which a Petition for Rehearing was denied without opinion, on March 22, 1965.

The opinion of the Circuit Court of Appeals of January 25, 1965, as well as its prior opinion of December 27, 1962, 311 Fed. 2d 441, are printed in the Appendix hereto.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 USC 1254 (1).

QUESTION PRESENTED.

Is evidence obtained by the Government through the agency of an informer who had been employed on a contingent fee basis to apprehend the Defendant in a crime not yet committed admissible against that Defendant?

Petitioner believes this to be "an important question of federal law which has not been, but should be, settled by this Court", within the meaning of Rule 19 (1) (b) of the Rules of the Supreme Court.

STATEMENT OF THE CASE.

The Petitioner was indicted for the possession of 179 gallons of whiskey in containers not having stamps affixed thereto as required by Section 5205 (a) (2), Title 26, United States Code; in violation of Section 5604 (a) (1), Title 26, United States Code. Upon conviction, he appealed to the United States Court of Appeals for the Fifth Circuit. The conviction was reversed, 311 Fed. 2d 441 (No. 19,382 in the Court of Appeals). A petition for rehearing was denied.

The evidence necessary to convict had been obtained through the agency of an informer who had been employed, on a contingent fee basis, to apprehend the Defendant in a crime not yet committed.

In reversing the original conviction for further proceedings not inconsistent with the opinion of the Court, it was held:

That the evidence obtained by the use of Moye would be admissible only if it were shown (1) the Government investigators had certain knowledge that Williamson was engaged in illicit liquor dealings; and (2) that the investigators carefully instructed Moye on the rules of entrapment and had it clearly understood that Moye would not induce the Defendant to commit a crime, but was simply offering him an opportunity to do so.

After reversal, the case was tried the second time before the District Judge, without a jury.

At that second trial the Government made no effort to meet either of the above requirements. As if there had never been a ruling by the Court of Appeals on the admissibility of the evidence, the prosecutor presented the agent, Mr. Robert E. Lee, who gave the same testimony as at the former trial.

At the proper point, the Defendant objected to its admissibility, citing the ruling of the Court of Appeals (R. 15-18). The Court reserved ruling on the objection. After the Government rested without making any effort to render the testimony admissible, the trial judge overruled the motion to exclude.

The Defendant took the position that Lee's testimony had already been condemned by the Court of Appeals,

and rested. Thereupon, on the sole basis of Lee's Testimony, the Court convicted Williamson.

Williamson again appealed, but the Circuit Court of Appeals held that since Moye's deposition was not used in the second trial the conditions prescribed by the former opinion were not pertinent, and the Government was not required to meet them.

The Court of Appeals further said: "Nor was there any evidence which the Trial Judge knew either judicially, actually, or factually which indicated that the initiation or prosecution of this case was the fruit of any illegal contingent agreement with Moye".

With deference, Petitioner is unable to understand this, in view of *United States v. California Co-op Canneries*, 279 U.S. 553, 73 L. Ed. 838; 49 S. Ct. 423, holding that a Federal Court judicially knows its own record.

A Motion for Rehearing was filed in which Petitioner contended "that the decision rendered in *Williamson v. United States*, 5th Cir., 1962, 311 F. 2d 441, was directed to the fruits of the contingent fee employment of the informer, Moye".

This was overruled without opinion.

ARGUMENT.

Reasons for Granting the Writ.

We feel that what the Court of Appeals said in its original opinion should be and is the law, and that the Court should have enforced its own opinion to that effect on the second appeal:

> "Without some justification or explanation, we cannot sanction a contingent fee agreement to produce evidence against particular named defendants as to crimes not yet committed".

Under the principles settled in *McNabb v. United States*, 1943, 318 U. S. 332, 340, and its progeny, however, "it becomes the duty of the Courts in federal criminal cases to require fair and lawful conduct from said agents in furnishing all evidence of crimes. Moye's testimony, standing alone and unexplained, discloses a form of employment of an informer which this Court cannot approve or sanction".

We feel that the second appeal, before a different panel, did not enforce the sound rule of law announced by the same court on the first appeal.

CONCLUSION.

We, therefore, respectfully pray the Supreme Court of the United States to review the judgment of the Court of Appeals and to settle the questions here raised.

Respectfully submitted,

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JAMES P. COLEMAN,
Ackerman, Mississippi,
Attorney for Petitioner.

CERTIFICATE.

I, James P. Coleman, the Attorney for Jack Marrin Williamson, the Petitioner herein, and a Member of the Bar of the Supreme Court of the United States, do hereby certify that on the .... day of April, 1965, I served five copies of this printed Petition upon Honorable H. M. Ray, United States Attorney, Oxford, Mississippi, by mail in a duly addressed envelope, postage prepaid.

.....

JAMES P. COLEMAN,
Attorney for Jack Marrin
Williamson.